



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 24, 1998

Ms. Mary Andrews  
Director of Civil Service  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR98-2002

Dear Ms. Andrews:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117609.

The City of Lubbock (the "city") received a request for various employment information concerning Lubbock Police Officer Eric Wilson. You state that the request was referred to the Director of Civil Service. Local Gov't Code § 143.089(g); *see Andrews v. Wilson*, 959 S.W.2d 686, 689-90 (Tex. App.--Amarillo, 1998, writ pending) (Lubbock subject to civil service statutes). You indicate that some of the documents, information contained in the Lubbock Police Department's internal personnel file, are confidential and will be withheld. Local Gov't Code § 143.089(g) (civil service city internal departmental personnel file); Open Records Decision No. 650 (1996); *see City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 952 (Tex. App.--Austin, 1993, writ denied). You explain that most of the officer's personnel information contained in the civil service file will, nonetheless, be released. Local Gov't Code § 143.089(a) (civil service personnel file); *but see* Local Gov't Code § 143.089(f) (unless required by law, civil service director must obtain officer's permission before releasing information). You claim, however, that several documents contained in the officer's civil service file may be withheld under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted documents.

You argue first that the submitted documents may be withheld under the "litigation exception." Section 552.103(a) excepts from disclosure information relating to litigation to which the state is or may be a party. Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a)

interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a). It appears that all of the information which you seek to withhold has either been provided to the potential opposing party or has been obtained from that party. Consequently, we do not believe that the submitted information may be withheld under section 552.103.

It appears that some of the requested information must be withheld. It also appears that you have marked most of this information. Section 552.117 of the Government Code provides that information may be withheld if it is:

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

\* \* \* \*

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

You must withhold, under section 552.117, the peace officer's home address, home telephone number, social security number, and information revealing whether the officer has family members. Code Crim. Proc. art. 2.12; Open Records Decision Nos. 532 (1989), 530 (1989).

Social security numbers may also be withheld in some circumstances under section 552.101 of the Government Code.<sup>1</sup> A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990. With the exceptions of the above noted information, you must release the submitted personnel information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/nc

Ref: ID# 117609

Enclosures: Submitted documents

cc: Mr. Emilio E. Abeyta  
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(w/o enclosures)